APPENDIX

Decision of United States District Court

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

67 Cr. 72 and 67 Cr. 196

UNITED STATES OF AMERICA

—against—

JOHN WESLEY EGAN and
BRYAN JOHN HILL,

Defendants,

On intervention of
STUYVESANT INSURANCE COMPANY,

The defendants absconded since June 19, 1967 and now remain at large. This motion seeks an order declaring null and void the bail bonds written by the Stuyvesant Insurance Company on the indictments here involved. Application denied.

The superseding indictment 67 Cr. 196 filed March 17, 1967 merely added defendants additional to Egan and Hill; the charge was the same (conspiracy to import (156) narcotics into the United States) as contained in the original indictment 67 Cr. 72 filed January 25, 1967. Despite Judge Bonsal's order of March 23, 1967 directing the rewriting of the bonds to cover the superseding indictment and Mr. Stone's (presently appearing for Stuyvesant) assurance that he was "agreeable" to having the original bonds so rewritten, this was not done. Movant does not assert that it

was not on notice at or about the time of Judge Bonsal's order. At no time did it move either to surrender defendants or ask to be relieved of its obligations under the bonds. Irrespective thereof, we fail to see how the filing of the superseding indictment enlarged in the least the risk of the surety's undertaking.

As to the episode relating to the arrest of Egan and Hill by agents of the Immigration and Naturalization Service: All the reasons and conclusions assigned in the paragraph immediately preceding hereof constitute our response to the assertion that this event too exonerated Stuyvesant of its responsibility.

(157) At first blush it would appear that exoneration did take place when Judge Cannella by order of May 22, 1967 allowed defendants to report to the office of the United States Marshal in this District once every ten days instead of every day as provided in the original bond covering 67 Cr. 72. While Stuyvesant did not sign a written consent thereto at the time, it acquiesced in the new arrangement concerning reporting by defendants, for it was on notice and failed to take affirmative action to be relieved of its obligation. It regarded the bonds binding as late as almost a month after Judge Cannella's order, for it refused to consent to Mr. Stone's application on June 19, 1967 made in open Court for permission to allow Hill to work in Mr. Stone's garden in Long Island (while Judge Mansfield so ordered upon appropriate conditions, the order was not carried out and proved abortive). We are inclined to agree with the observation in the opposing affidavit of the Assistant United States Attorney (p. 6):

> "This statement [the bondsman's refusal to consent to Mr. Stone's request for enlargement of the bond limits affecting Hill to include Long Island] would seem completely inconsistent with his prior position that he believed the bond to have been exonerated back in March."

(158) Here again Stuyvesant made no move to surrender defendants or ask to be exonerated. We observe in passing that Judge Cannella's order did not enlarge the bail limits whatever.

We must bear in mind that the Criminal Calendar Part is heavily laden constantly. Generally speaking, bond applications are speedily made and disposed of. Neither time or facilities exist there for a running communication between court and surety. The latter are aware of all this. They are under the strict obligation at all times to be diligent and vigilant whenever they know, or reasonably should know, of possible impairment to their commitments. We are not confronted here with a clear enlargement of the bond either without notice or made with insufficient time to the surety to protect itself adequately.

From what is here revealed, we find that movant does not distinctly and unequivocally aver that it was not on notice within a reasonable time of each and every court order made prior to the disappearance of defendants. Nowhere does it deny complete failure to surrender them or move for exoneration. Rule 46(g) Federal Rules of Criminal Procedure.

(159) The Government did not impair the bond obligation. By inaction movant acquiesced in what here took place.

Motion as to 67 Cr. 72 denied in all respects.

This shall be considered an order; settlement thereof is unnecessary.

So Ordered:

New York, N. Y.
November 6, 1967

Irving Ben Cooper
United States District Judge